

The Administrative Law Judge (ALJ) found that claimant was given a medical layoff from respondent on June 14, 2004, based on claimant's permanent restrictions that could

not be accommodated. For this reason, claimant demonstrated a change in circumstances and was entitled to a review and modification of his prior awards. The ALJ found that claimant is entitled to a 50 percent work disability in docket No. 258,706 as a result of his low back injury of March 10, 1998, but found claimant had not suffered a work disability in docket No. 1,006,143 relating to his April 18, 2001, work-related neck injury.

The claimant requests review of the ALJ's failure to also award a 100 percent wage loss to the claimant for his injury of April 18, 2001. Claimant asserts that since the layoff, he has a 100 percent wage loss resulting from both his low back injury of March 10, 1998, and his neck injury of April 18, 2001.

Respondent argues the evidence showed that claimant was given a medical layoff due to medical restrictions pertaining to his low back claim of March 10, 1998. Accordingly, respondent asserts claimant's work disability was correctly placed on that claim, and the ALJ's Award should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant had two work related-injuries while working for respondent. Claimant injured his low back on March 10, 1998, while working in the tooling department. After treatment, which included surgery to his low back, claimant returned to work for claimant with restrictions that included limited bending, lifting and walking. He was first given a light duty job but eventually returned to his regular job in the tooling department. Claimant testified that when he returned to the tooling department, he was able to do the job with accommodations. He testified that respondent allowed him to pick jobs that were less strenuous with less lifting. Claimant also testified that his co-workers helped him.

Claimant settled his workers compensation claim in docket No. 258,706 by an agreed Award on March 26, 2001 for a 15 percent general bodily disability. Claimant's right to seek review and modification and future medical treatment were left open upon application to the Workers Compensation Director.

On April 18, 2001, claimant injured his neck while working for respondent in the tooling department. He testified that he did not take off work immediately but continued to work at an accommodated position. Eventually, however, claimant had surgery on his neck, and he was off work for eight months. When Dr. Philip Mills released claimant to return to work, he put restrictions on claimant of no overhead lifting and limited hyperextending of the arms. Because respondent would not allow claimant to return to work with those restrictions, claimant asked Dr. Mills to release him from those restrictions, and Dr. Mills did so. When claimant returned to work, he was moved from the tooling

department to the modification department because there had been layoffs in the tooling department. Claimant testified he was able to do the work in the modification department with accommodations.

On December 19, 2003, claimant settled his neck claim, docket No. 1,006,143, with respondent for a 20 percent impairment to the body as a whole. Again, claimant's right to seek review and modification and future medical were left open.

On April 29, 2004, claimant was advised that his job was ending and that respondent had no other job which would accommodate claimant's medical restrictions. Claimant was sent home that day to await the decision of respondent's review board. During that time, he was on disability insurance. On June 14, 2004, claimant was notified that his medical layoff was effective April 30, 2004. Respondent's records indicate claimant was laid off because of "permanent limitations of limited bending, 500 yard walk, lift max. 30 lbs. Stand for 10 min. at one time, sit for 10 min. at [one] time."<sup>1</sup> Testimony from Dr. Daniel Hein, a staff physician at respondent, indicated that those restrictions related back to claimant's low back injury of March 10, 1998.

The ALJ found that claimant had suffered a work disability in regard to the March 10, 1998, claim only. There was no testimony in the record from any physician concerning claimant's task loss; therefore the ALJ concluded claimant's task loss to be 0 percent. The ALJ also found that claimant made a good faith effort to find employment and his actual wage loss was 100%. Averaging the 0 percent task loss with the 100 percent wage loss calculated to a work disability of 50 percent for claimant's March 10, 1998, injury. The ALJ denied claimant's request for a review and modification of his award for his injury of April 18, 2001.

Claimant points out that he worked for respondent for over three years after his low back surgery with no further injury to his back. He claims he was laid off only after he complained of an injury to his shoulders and respondent discovered the restrictions in his records. Claimant also argues that the reason for his layoff is irrelevant to the determination of work disability, and since the layoff he has had a 100 percent wage loss in each case.

The Board agrees with the ALJ's findings and conclusions, except the Board finds that both of claimant's injuries contributed to his wage loss and his reduced capacity to work. Accordingly, claimant has suffered a 100 percent wage loss in both docketed claims. Respondent, however, is entitled to a 100 percent credit in docket No. 1,006,143 against the work disability awarded in docket No. 258,706.<sup>2</sup> Therefore, any weeks of permanent

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<sup>1</sup>Review and Modification Hearing (Sept. 13, 2004), Cl. Ex. 1

<sup>2</sup>See K.S.A. 44-510a.

partial disability compensation paid in docket No. 258,706 that overlaps the weeks of permanent partial disability compensation paid in docket No. 1,006,143 shall be deducted from and reduce the total amount of compensation paid for the later injury. The Board also finds that claimant is entitled to work disability from April 30, 2004, the day after he last worked for respondent.

**AWARD**  
**Docket No. 258,706**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes in Docket No. 258,706 dated March 3, 2005, is modified as follows:

Claimant is entitled to 22.28 weeks of temporary total disability compensation at the rate of \$351 per week or \$7,820.28 followed by 61.16 weeks of permanent partial disability compensation at the rate of \$351 per week or \$21,467.16 for a 15% functional disability followed by 94.71<sup>3</sup> weeks of permanent partial disability compensation beginning April 30, 2004, at the rate of \$351 per week or \$33,243.21 for a 50% work disability, making a total award of \$62,530.65.

As of October 25, 2005 there would be due and owing to the claimant 22.28 weeks of temporary total disability compensation at the rate of \$351 per week in the sum of \$7,820.28 plus 138.87 weeks of permanent partial disability compensation at the rate of \$351 per week in the sum of \$48,743.37 for a total due and owing of \$56,563.65, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of \$5,967 shall be paid at the rate of \$351 per week for 17 weeks or until further order of the Director.

**Docket No. 1,006,143**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes in Docket No. 1,006,143 dated March 3, 2005, is modified as follows:

Claimant is entitled to 32.43 weeks of temporary total disability compensation at the rate of \$401 per week or \$13,004.43 followed by 79.51 weeks of permanent partial disability compensation at the rate of \$401 per week or \$31,883.51 for a 20% functional disability followed by 119.28 weeks of permanent partial disability compensation beginning April 30, 2004, at the rate of \$401 per week or \$47,831.28 for a 50% work disability,

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<sup>3</sup>The number of weeks is limited to 94.71 because a permanent partial disability award cannot be paid for more than 415 weeks from the date of accident, which in this case calculates to be February 21, 2006. K.S.A. 44-510e(a).

making a total award of \$92,719.22. However, respondent is entitled to a 100 percent credit for the permanent partial disability compensation paid claimant in docket No. 258,706, for the overlapping weeks from April 30, 2004, to February 21, 2006, a period of 94.71 weeks. Accordingly, for those weeks, claimant is entitled to receive permanent partial disability compensation of \$50 per week. After February 21, 2006 and thereafter until the award is paid, claimant is entitled to \$401 per week. This reduces the total award to \$59,476.01.

As of October 25, 2005 there would be due and owing to the claimant 32.43 weeks of temporary total disability compensation at the rate of \$401 per week in the sum of \$13,004.43 plus 79.51 weeks of permanent partial disability compensation at the rate of \$401 per week in the sum of \$31,883.51. From April 30, 2004 until October 25, 2005, there would be due and owing 77.71 weeks of permanent partial disability at the rate of \$50 per week in the sum of \$3,885.50, which is ordered paid in one lump sum less amounts previously paid. From October 26, 2005 through February 21, 2006, a period of 17 weeks, the claimant is entitled to permanent partial disability compensation at the rate of \$50 per week for a total of \$850. Thereafter, the remaining balance in the amount of \$9,852.57 shall be paid at the rate of \$401 per week for 24.57 weeks or until further order of the Director.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Stephen J. Jones, Attorney for Claimant  
       Eric K. Kuhn, Attorney for Respondent and its Insurance Carrier  
       Nelsonna Potts Barnes, Administrative Law Judge  
       Paula S. Greathouse, Workers Compensation Director